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No. 89-105

IN THE

Supreme Court of the United States

October Term, 1989

JOE L. ROBINSON,
Petitioner,

vs.

DAVE QUICK, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT U.A.W. LOCAL 696 IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I. STATEMENT OF THE CASE

This case involves two separate actions which were filed by the Petitioner Joe L. Robinson ("the Petitioner" or "Mr. Robinson") against two of his supervisors and against his Union concerning events leading up to and including his termination from employment with the Delco Moraine Division of General Motors in Dayton, Ohio ("GM" or "Company"). Mr. Robinson has represented himself *pro se* throughout these proceedings.

In June of 1984, Mr. Robinson filed a Complaint against his supervisors, Dave Quick and Zola Peck, in the United States District Court for the Southern District of Ohio alleging that he was disciplined for refusal to perform jobs for which he was medically unsuited. He was permitted to amend this Complaint to specify a cause of action under 42 U.S.C. §1981. Following a jury verdict in November of 1987, judgment was entered in favor of the defendants.

Mr. Robinson's Complaint against U.A.W. Local 696 ("the Union") was brought in the United States District Court for the Southern District of Ohio on September 26, 1986, pursuant to 42 U.S.C. §1983; 42 U.S.C. §1985(3); §301 of the Labor Management Relations Act (LMRA), 29 U.S.C. §185; 42 U.S.C. §1981; §704(a) to Title VII, 42 U.S.C. §2000e-3(a); and the fourteenth amendment to the United States Constitution. On April 14, 1987, the Union filed a Motion for Summary Judgment with accompanying exhibits. The District Court dismissed Mr. Robinson's claims under 42 U.S.C. §1983 and the fourteenth amendment because of a lack of evidence of state action, and dismissed the claims under 42 U.S.C. §1985(3) because of a lack of evidence of conspiracy.

The district court noted, however, that Mr. Robinson had introduced an Affidavit sufficient to create a genuine issue of material fact as to his retaliation claims under 42 U.S.C. §2000e-3(a). The Union was granted fourteen days to depose Mr. Robinson to flesh out the details of his retaliation claim. The Union then filed a second Motion for Summary Judgment which was granted in June, 1988.

Upon Mr. Robinson's appeal of the two cases to the United States Court of Appeals for the Sixth Circuit, the court determined that consolidation of the cases for submission to the court was appropriate. The cases involve a common factual background.

Joe L. Robinson is a black man who was employed by GM from 1968 until 1985. The Union, U.A.W. Local 696, represented the employees in the facility, and Mr. Robinson was a member of the Union. After sustaining injuries at work in 1974, Mr. Robinson was placed on medical restrictions ("coded") preventing him from performing various jobs at the plant. Mr. Robinson had various disputes with the Company as to which jobs were suitable for him, prompting the Company at one point to invite Mr. Robinson's personal physician into the plant to identify suitable jobs, and at another point to seek the assistance of the plant medical department for the same purpose.

On August 1, 1985, a meeting of Company personnel was held in an effort to identify a job which Mr. Robinson could perform in light of his "codes." No Union official attended this meeting. Because Mr. Robinson's day shift job was being phased out, a decision was reached to transfer Mr. Robinson to the second shift. This decision was reached without consultation with, or input by, the Union.

On August 5, 1985, plaintiff showed up for work on day shift, and was told by Dave Quick, his supervisor, to leave the plant as he had been assigned to the afternoon shift. Because Mr. Robinson believed that this was a contract violation, Mr. Robinson refused to comply with the supervisor's order.

Mr. Robinson was given a disciplinary layoff ("DLO") by his supervisor, Dave Quick, for refusing an order to leave the plant on August 5, 1985. On August 8, 1985, Union Committeeman Kent Hawkeye filed a grievance on Mr. Robinson's behalf seeking to overturn the DLO. After August 8, 1985, Mr. Robinson never filed another grievance of any kind.

A series of letters ensued in which a Company representative warned Mr. Robinson that his failure to report to his proper shift could cause the loss of his seniority. Mr. Robinson responded with a letter indicating that he intended to continue to show up to work at the commencement of the day shift. The Company sent another letter to Mr. Robinson warning him that he faced termination, but Mr. Robinson still failed to comply. Ultimately, on September 17, 1985, Mr. Robinson received a letter from the Company terminating his employment. Mr. Robinson did not file a grievance concerning his termination.

On May 15, 1989, the Sixth Circuit affirmed the judgments of the United States District Court for the Southern District of Ohio as to both Mr. Robinson's claims against the Company and his claims against the Union. The court noted that it was Mr. Robinson's refusal to comply with his shift change, despite repeated warnings, that led to his termination, and that there was no evidence that the Union prevailed upon the Company to terminate him.

II. SUMMARY OF ARGUMENT

The Petitioner has failed to demonstrate special and important reasons why a Writ of Certiorari should issue in this case. There is no conflict between the Sixth Circuit and any other circuit court as to the law applicable to this case, nor a conflict with the applicable rulings of this Court.

The courts below correctly noted that the Petitioner can set forth a claim of retaliation for protected activity against the Union only if he proffered some evidence of a causal connection between the protected activity and the adverse employment action. Petitioner not having done so, the district court properly dismissed Petitioner's claims of retaliatory discharge under 42 U.S.C. §2000e-3(a), and under 42 U.S.C. §1981.

Under this Court's holding in *Vaca v. Sipes*, 386 U.S. 171 (1967), the Union has no obligation to process every grievance to arbitration regardless of its merit. The Petitioner proffered no evidence that the Union acted with a retaliatory motive in withdrawing any of his grievances.

Because there is no state action involved in this case, the Petitioner's reliance on the fourteenth amendment and 42 U.S.C. §1983 for the issuance of a Writ of Certiorari are not well founded. Similarly, since the Petitioner failed to proffer any evidence to the district court of a conspiracy, the Sixth Circuit was correct in upholding the dismissal of Mr. Robinson's claims under 42 U.S.C. §1985(3).

III. ARGUMENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

A. The Petitioner Has Failed to Demonstrate Special and Important Reasons Why a Writ of Certiorari Should Issue.

Rule 17 of the Rules of the Supreme Court of the United States indicates that a Writ of Certiorari "will be granted only when there are special reasons therefore." These special reasons include resolution of a conflict between the federal courts of appeals, resolution of a conflict between the court of appeals and a state court of last resort, and correction of a decision which conflicts with applicable holdings of this Court. *Id.*

The Petitioner in the case at hand has failed to demonstrate that the issuance of a Writ is appropriate in this case. There is no conflict between the Sixth Circuit's interpretation of applicable law and that of any other circuit court, nor does the ruling of the Sixth Circuit fail to comply with applicable rulings of this Court. The Petitioner apparently takes exception to the Sixth Circuit's affirmance of the decision of the district court in this case; however, this is not a "special and important" reason that would warrant the issuance of a Writ by this Court.

B. Petitioner's Retaliation Claims Were Properly Dismissed Because He Proferred No Evidence of Causal Connection Between Protected Activity and the Adverse Employment Action.

Prior to dismissal of his claims against the Union, Mr. Robinson proffered some evidence of having engaged in protected opposition to Title VII discrimination. To make out a *prima facie* case of retaliatory discharge under Title VII, 42 U.S.C. §2000e-3(a), a plaintiff must show:

> (1) that he engaged in protected opposition to Title VII discrimination or participated in a Title VII proceeding;
>
> (2) that he was subject to adverse employment action subsequent to or contemporaneous with his protected activity;
>
> (3) there is a causal connection between the protected activity and the adverse employment action.

Jackson v. Pepsi Cola, 783 F.2d 50, 54 (6th Cir. 1986), *cert. denied*, 478 U.S. 1006 (1986). The "causal connection" requirement has similarly been found to be a necessary component of a retaliation claim under 42 U.S.C. §1981. *Irvin v. Airco Carbide*, 837 F.2d 724, 727 (6th Cir. 1987); *Goff v. Continental Oil Co.*, 678 F.2d 593 (5th Cir. 1982). As the district court and the Sixth Circuit noted, although Mr. Robinson could establish the first two factors, he proffered no evidence whatsoever of a causal connection between his protected activity and his discharge. Indeed, the district court noted that rather than causing Mr. Robinson's termination, the Union, by advising him to report to the second shift and then to file a grievance, gave him advice which may have prevented the termination of his employment.

C. The Union Acted Within the Law in Withdrawing or Settling Certain of the Petitioner's Grievances.

The Petitioner apparently asks that this Court issue a Writ of Certiorari in part based on the allegation that certain of his grievances were withdrawn or settled by the Union. The Union has no obligation to process every grievance to arbitration and may withdraw those grievances which it finds to be without merit. *Vaca v. Sipes, supra*, p. 5. Mr. Robinson proffered no evidence which would tend to demonstrate that any grievance was withdrawn for a retaliatory motive.

D. Lack of State Action Properly Called for Dismissal of Mr. Robinson's Claims Under the Fourteenth Amendment and 42 U.S.C. §1983.

In the case at hand, the Petitioner proffered no evidence of state action. Accordingly, the Sixth Circuit properly found that his claims against the Union under the fourteenth amendment and 42 U.S.C. §1983 were properly dismissed.

E. Lack of Proffered Evidence of a Conspiracy Properly Called for Dismissal of Petitioner's Claims Under 42 U.S.C. §1985(3).

While Mr. Robinson asserted a claim against the Union under 42 U.S.C. §1985(3), he failed to proffer any evidence of a conspiracy. Accordingly, the Sixth Circuit correctly found that his claims of conspiracy were properly dismissed by the district court.

IV. CONCLUSION

Respondent Local 696, U.A.W. respectfully requests this Honorable Court to deny the Petition for a Writ of Certiorari because the Petitioner has not identified any special and important reasons why a Writ should issue.

Respectfully submitted,

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